

## Introduction

The National Bus Strategy launched by government in March 2021 required the WMCA (through TfWM) to develop a Bus Service Improvement Plan (BSIP). There was also a stipulation to commit to deliver an Enhanced Partnership or commence development of Bus Franchising schemes in order to access future bus funding. This BSIP was published on the 5<sup>th</sup> November 2021 and whilst the Franchising Assessment is underway, TfWM have committed to amending the current A34(N) and A45 Enhanced Partnership to cover the whole West Midlands Metropolitan area.

With the adoption of this Enhanced Partnership legislation pursuant to the Bus Services Act 2017, TfWM can be empowered to take on the role of the Traffic Commissioner for the purposes of registration of local bus services that are wholly within the designated Enhanced Partnership area. The published BSIP outlines that TfWM will adopt these powers and this briefing note is provided to outline details of proposals.

## Why are we only taking these powers on now when we already have an established Enhanced Partnership?

Given the limited geographical scope of the original EP scheme, few services are fully in the scheme area. However, the widening of the scheme will mean this is no longer the case and will enable us to have the option of taking these powers on.

In addition to TfWM's commitment in the BSIP, there are advanced proposals related to a 'Bonfire of Bus Tickets' which, amongst other aspects, seeks to remove the premium on the nBus multi-operator fare. This may necessitate the implementation of mechanism to avoid 'over-bussing' on certain routes and at certain times and TfWM believe the most appropriate way to achieve this is by using legislation in the Bus Services Act 2017 to create 'Route Requirements'. Legislation dictates that TfWM need to take on Bus Registration powers to implement Route Requirements.

## Other factors to consider

TfWM are investigating the need for a temporary post to oversee incoming registrations for 6 months from 2<sup>nd</sup> January 2023 to ensure a seamless process in taking on these powers.

As a reminder - TfWM can only take on these powers for routes wholly within EP Scheme. There are currently two Advanced Quality Partnership Schemes (AQPS) in the region and legislation does not permit both an AQPS and EP at same location. TfWM are currently in the process of revoking the AQPS's and incorporating their areas into the EP Scheme which will prevent the confusing situation of TfWM not taking on the powers for services entering these areas.

## Responsibilities

TfWM will need to undertake a number of responsibilities associated with receiving local service registrations. TfWM must hold and publish:

- the name and address of the person who made the application and the registration serial number allocated to it by the LTA
- the starting date of the service
- the start and end points of the service
- a description of the route and principal places served and;
- the frequency of the service including the days it will run.

In the case of a variation or cancellation, in addition to above:

- details of the variation in the registered particulars, or a statement of the cancellation of the registration and;
- the effective date of the variation or cancellation.

TfWM must have systems in place to process and store the required information. It is proposed that the current excel spreadsheets used for storing registrations on the WMCA SharePoint system will be able to meet these requirements.

In addition to these requirements TfWM intends to ask operators to provide details of specific changes to journeys or frequencies above the current requirements which are open to vague descriptions.

## IT requirements

In order to take on these powers TfWM will need to have an electronic system by which operators can submit and make a payment when applying to register a bus service. TfWM have been working with WMCA IT to create a system by which operators will be able to upload relevant documents.

IT have created a project brief to complete this work and have indicated that the cost of creating the brief is **£42,682**. Finance have indicated that this cost can be accommodated from the administration allocation of the Bus Service Improvement Plan funding received by TfWM as part of the 'Bus back better' initiative by DfT.

Furthermore, operators will be required to pay a registration fee each time that they submit a registration. If this cost was not charged to BSIP, it is anticipated that it would be offset by registration fees income within 12-18 months. IT have not gathered clear ongoing costs, however they have estimated that there is a licensing cost for the proposed system of £1,680 per annum. This too should be accommodated within the fees income which will be generated from taking on this work.

## Proposed timescales

It is proposed that these powers are adopted to align with the introduction of the 'Bonfire of Bus Tickets' on **Jan 1<sup>st</sup> 2023**. As there is only minimal additional staff resource identified, and the new structure has been created to reflect the needs of taking on these powers, this date is seen as reasonable from a staffing perspective.

IT are confident that the IT systems needed will be in place for November 2022 in preparation for testing and training – though not having this system ready has been flagged as an internal risk.

## Fees and charges

TfWM intend to publish a breakdown of these costs to operators charged alongside other statutory information on the TfWM website. TfWM believe that the costs of undertaking these powers are the same as the current rates charged by the Traffic Commissioner. This cost is based on the assumption of TfWM receiving typically around 700 registrations annually.

TfWM intend to introduce a charge of **£60** per registration (**£13** for a Community Bus Service) made up of:

- £54 (£11.70 for Community) Staff cost
- £3 (£0.65 for Community) Accommodation cost and;
- £3 (£0.65 for Community) Ancillary cost.

This charge would be enforced for all registrations including TfWM tendered services. The charge will be subject to an annual review

## Finance

Financially, taking on these powers is seen as positive as TfWM can generate income through the charges proposed in the 'Fees and charges' section. This will allow TfWM to offset the costs related to creating the IT systems and potential additional staffing required for a short term allowing a smooth transition to a new way of working. TfWM will also review the cost on an annual basis.

## Defining process of cancellation and challenge

Whilst the powers TfWM are able to take on are limited there are some key actions through the cancellation of registrations during their lifetime may cause conflict between TfWM and operators. TfWM refusing or cancelling a registration that is

yet to begin has been defined in legislation in the Bus Services Act 2017.

For cancellation and challenge of EP requirements or registrations that are active TfWM have committed to defining the processes required for such events to ensure TfWM both acts lawfully and can maintain a good relationship with operators in helping them to meet the requirements through which a need to cancel a registration has arisen.

These processes will be defined through discussions and assessment of the potential impacts with the Combined Authority’s legal department and the Traffic Commissioner. The key processes needed to be defined have been determined as:

- An operator not meeting an Enhanced Partnership requirement.
- How TfWM monitors operators on meeting Enhanced Partnership requirements and the level of evidence required where it is deemed fit for TfWM to take action by cancelling a registration.
- How TfWM defines a calculation of ‘route requirements’ (i.e. maximum frequencies) and how an operator can challenge the calculation used. A key factor in this is also a process that allows TfWM to effectively ‘recalculate’ recognising that over time the bus market and general travel changes.
- Operators refusing to pay the charge that TfWM deems is correct for submitting their registration.
- A process of cancellation where TfWM believes a registration is no longer operating.

## Legal

There are no immediate legal implications. The legal team have indicated that the proposal meets all of the requirements contained in the Bus Services Act 2017 legislation and have arranged a number of meetings with TfWM to establish the position in TfWM with regards to the Enhanced Partnership and BSIP.

It is recognised that legal support will be required in instances where TfWM see it fit to cancel a registration due to an operator not meeting Enhanced Partnership or Route Requirements. TfWM are currently discussing with legal exactly where this sits within the cancellation process so that ideally, legal can provide guidance to elected members making decisions.

The legal team will provide continued support before these powers are undertaken where required to ensure compliance with legislative provisions and adherence to required internal governance.

## Risks

A number of risks have been identified and appropriate mitigation is being proposed to prevent these from materialising. The risks identified are:

- Operators taking advantage and sending in a number of short notice registrations – TfWM needs to ensure it enforces 70-day period and only short notice when absolutely necessary.
- Reputational risk of stakeholders believing we have more power than we do – make sure we are clear through all channels of the actual powers received.
- Operators believing conflict of interest – in effect need to create Chinese Walls between project sponsors and registration team!
- AQPS areas not being revoked – Need to be clear with operators those services which are included and those which aren’t.
- IT systems not being ready in time – project managers will keep in regular contact with IT to inform progress.

### Further Information

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